**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 26560 of 2006**

**For Approval and Signature:**

**HONOURABLE MR. JUSTICE B.J.SHETHNA**
**HONOURABLE MR.JUSTICE H.B.ANTANI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**NARENDRAKUMAR CHANDULAL PATEL - Petitioner(s)**
**Versus**
**STATE OF GUJARAT THR' ELECTION OFFICER & SECRETARY & 2 - Respondent(s)**

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**Appearance :**
MR PARESH M DAVE for Petitioner(s) : 1,
MR AD OZA for Respondent(s) : 1,
MR SIRAJ GORI AGP for Respondent(s) : 2,
MR VM PANCHOLI for Respondent(s) : 3,

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**CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA**

**and**

**HONOURABLE MR.JUSTICE H.B.ANTANI**

**Date : 09/01/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)**

Rule. Shri A.D.Oza waives service for respondent No.1, Shri Siraj Gori learned AGP waives service for respondent No.2 and Shri V.M.Pancholi waives service for respondent No.3.

Petitioner-Shri Narendrakumar Chandulal Patel has filed this petition under Article 226 of the Constitution of India and challenged the impugned order dated 16.12.2006 (Annexure-D) passed by the Election Officer and order dated 18.12.2006 (Annexure-F) passed by the Commissioner – respondent No.2.

It is the case of the petitioner that he is serving as an Assistant Teacher in Jaihind Vidhyalaya, Taluka Savli, District Vadodara. He submitted his application dated 12.12.2006. His name was proposed by one Shri Narendrabhai Vitthalbhai Patel, Assistant Teacher of Shri Seva Samaj Sharda Mandir School at Varnama of Vadodara District (Annexure-B is the nomination form). Voters' list published by the respondent-Board is at Annexure-C collectively, wherein at Sr.No.1821, name of Shri N.C.Patel is shown and the name of Shri N.V.Patel shown at Sr. No.2. At the time of scrutiny of forms, respondent No.1-Election Officer, rejected the nomination form of the petitioner by his impugned order dated 16.12.2006 (Annexure-D) on the ground

that there was a breach of Rule 9(2)(ii) of the Gujarat Secondary and Higher Secondary Education Regulations, 1974. Aggrieved by the same, the petitioner filed an appeal on 18.12.2006 before the respondent No.2-Commissioner, which was rejected on the same day i.e. 18.12.2006 by the respondent No.2 by his impugned order dated 18.12.2006 (Annexure-F) on the ground that name of the candidate and his proposer were not there in the voters' list. Hence, the present petition.

Shri Dave learned counsel for the petitioner vehemently submitted that both Election Officer as well as Commissioner committed grave error in rejecting his nomination form and appeal on the ground that name of the candidate and the proposer were not there in the voters' list. He submitted that names of both candidate and his proposer were very much there in the voters' list at `Annexure-C' collectively. In the voters' list at `Annexure-C' at Sr. No.1821, name of N.C. Patel is there. As per the submission of Shri Dave full name of the petitioner is Patel Narendrakumar Chandulal, but in voters list it is in abbreviated form. Similarly, in the voters' list at Sr. No.2 name of N.V.Patel is there, whereas his full name is Narendrabhai Vitthalbhai Patel. He, therefore, submitted that both the Election Officer as well as the Commissioner committed grave error in rejecting his nomination form and the appeal. He, therefore, submitted that the impugned decision be quashed and set aside and the elections

be ordered.

This petition was vehemently opposed by Shri Oza learned counsel for the respondent No.1, Shri Gori learned AGP for respondent No.2 and Shri Pancholi for respondent No.3 on two grounds; (1) that the respondent No.3-Ghanshyambhai Bhailalbhai Patel is already declared uncontested, and (2) only remedy available to the petitioner is of election petition.

On merits also they submitted that the decisions taken by the Election Officer as well as the Commissioner are just and proper, therefore, this court should not interfere with the same in its extra-ordinary writ jurisdiction under Article 226 of the Constitution of India.

Shri Dave for the petitioner submitted that though respondent No.3 is declared uncontested, this court can certainly exercise its powers under Article 226 of the Constitution and quash and set aside both the impugned orders at Annexure-D and Annexure-F passed by the Election Officer and Commissioner respectively as both the decisions are manifestly illegal. In support of his submission he has placed reliance on the recent judgment of the Hon'ble Supreme Court in case of ***Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel reported in (2006)8 SSC 200***. Whereas, the learned counsel for the respondents Shri Oza for the respondent No.1, Shri Gori learned AGP for respondent No.2 and Shri

Pancholi for respondent No.3 placed reliance on the three Judges Bench of the Hon'ble Supreme Court in case of ***Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee reported in (2006)8 SCC 487***.

Before considering the aforesaid decisions of the Hon'ble Supreme Court, we have to consider peculiar facts of this case. In the nomination form Shri Patel Narendrakumar Chandulal – petitioner has shown his name as Patel Narendrakumar Chandulal, whereas in the voters' list at Annexure-C page 14 of the compilation name is shown as N.C.Patel. Similarly, Patel Narendrabhai Vitthalbhai who has proposed the name of the petitioner has also shown his name as Patel Narendrabhai Vitthalbhai whereas in the voters' list at Annexure-C at page No.15 of the compilation his name is shown as N.V.Patel at Sr. No.2. Thus, apparently, names of both the candidate and his proposer in the voters' list do not tally. In that view of the matter, if the Election Officer has rejected the candidature of the petitioner and his appeal against the same is dismissed by the Commissioner, then we are of the considered opinion that such a decision cannot be said to be illegal. Therefore, there is no question of interference as in our considered opinion, the facts of Jayrajbhai (supra) before the Hon'ble Supreme court were totally different.

We fail to appreciate that how the aforesaid judgment of Hon'ble Supreme Court in Jayrajbhai's

case (supra) will have any application on facts of this case.

Law on this point is very well settled by Hon'ble Apex Court itself in Avtar Singh's case (supra). Normally, this court would not interfere when the election process is started and in the instant case, the respondent No.3 is already declared uncontested.

In view of the above, we are of the considered opinion that the better remedy available to the petitioner is of election petition and not writ petition under Article 226 of the Constitution.

With these observations, this petition is dismissed. Rule discharged. No costs.

**(B.J.SHETHNA, J.)**

**(H.B.ANTANI, J.)**

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